

COUNTY NOTICES PURSUANT TO A.R.S. § 49-112

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NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

MARICOPA COUNTY AIR POLLUTION CONTROL REGULATIONS P-26 RESIDENTIAL WOODBURNING RESTRICTION ORDINANCE

[M08-38]

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

Notice of Proposed Rulemaking: 13 A.A.R. 3701, November 2, 2007

2. Sections affected:

P-26 Residential Woodburning Restriction Ordinance

Rulemaking action

Amend

3. Statutory authority for the rulemaking:

Authorizing statute: A.R.S. § 11-871

Implementing statute: A.R.S. § 49-501(F)

4. Name and address of department personnel with whom persons may communicate regarding the rulemaking:

Name: Kathleen Sommer or Jo Crumbaker

Maricopa County Air Quality Department

Address: 1001 N. Central Ave., Suite 595
Phoenix, AZ 85004

Telephone: (602) 506-6706 or (602) 506-6705

Fax: (602) 506-6179

E-mail: kathleensommer@mail.maricopa.gov or jcrumbak@mail.maricopa.gov

5. Explanation of the rule, including the department's reasons for initiating the rule:

The Maricopa County Residential Woodburning Restriction Ordinance (RWBRO) is proposed to be revised as a result of the recently enacted Senate Bill 1552 which amends A.R.S. §§ 11-871(B), (D)(3), and (D)(4) and 49-501(F). A.R.S. § 11-871 applies to residential woodburning in sections of Area A that are within Maricopa County when monitoring or forecasting indicates that the carbon monoxide (CO) standard or the particulate matter (PM) no-burn standard are likely to be exceeded.

A.R.S. § 49-501(F) authorizes the existing ordinance to include restrictions to open outdoor fires in chimineas, fire pits and other similar outdoor fires. These revisions directed in SB 1552 resulted from a review of residential woodburning programs in other parts of the country. The review concluded that increasing the penalties for burning and closing the loopholes in the existing residential woodburning program would result in additional particulate matter reductions. The review also concluded that changes to other elements of the residential woodburning program other than this curtailment program and the clean burning fireplace requirements for new construction would result in only de minimis incremental emission reductions. The increased penalty described in A.R.S. §§ 11-871 (D)(3) and (D)(4) increases the civil penalty for violations of this ordinance to \$250 for the fourth or any subsequent violation.

The PM_{2.5} no-burn action threshold was added to this Ordinance action level following observed recorded values of the 24-hour PM_{2.5} standard in excess of the National Ambient Air Quality Standard. The PM_{2.5} standard was violated in Phoenix during the 2006-2007 Christmas and New Year holiday season purportedly due to residential woodburning and holiday traffic emissions. Maricopa County is currently in compliance with the PM_{2.5} standard and a change in designation to a non-attainment area for PM_{2.5} will require collecting ambient data for three years. The addition of the PM_{2.5} action level in this Ordinance will provide an early warning alert to ambient conditions and

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consequently can help prevent further exceedances of the PM_{2.5} standard. This change should assist the Phoenix area to avoid becoming designated as a non-attainment area for PM_{2.5} by the EPA.

Section by Section Explanation of Changes:

Section 1(A)	This proposed amendment will include restrictions on additional burning devices: outdoor fire pits, woodburning chimineas, and similar outdoor fires when monitoring or forecasting indicates air quality standards will be violated.
Section 1(B)	This proposed amendment will make the ordinance applicable to outdoor fire pits, woodburning chimineas, and similar outdoor fires.
Section 2(B)(1)	This proposed amendment will update the definition of an approved device certified by the EPA Phase II Standards of Performance for Wood heaters in 40 Code of Federal Regulations (CFR) 60, Subpart AAA through July 1, 2007.
Section 2(B)(3)	This proposed amendment will add both indoor or outdoor woodburning fireplaces to the approved woodburning device definition as well as specify that they are designed to burn exclusively natural gas or propane.
Section 2(B)(4)	This proposed amendment will update performance standards for any solid fuel burning device equivalent to the standards in 40 CFR 60, subpart AAA through July 1, 2007.
Section 2(C)	This proposed amendment will update the legal land description of Area A in the federal township-range format so that it coincides with the description of Area A found in A.R.S. § 49-541(1).
Section 2(D)	This proposed amendment will require the additional woodburning devices: outdoor fire pits, woodburning chimineas, and similar outdoor fires to cease combustion within three hours after declaring a restricted-burn period.
Section 2(G)	This proposed amendment will correct the reference to asphalt products and will change the moisture content of inappropriate fuel.
Section 2(I)	This proposed amendment will add a definition of outdoor fire pits.
Section 2(J)	This proposed amendment will add a definition of the ozone standard.
Section 2(K)	This proposed amendment will update the definition of the particulate matter no-burn standard to include 24-hour concentrations for both PM ₁₀ and PM _{2.5} .
Section 2(L)	This proposed amendment will update the definition of the national ambient air quality standard for particulate matter to include both standards for PM ₁₀ and PM _{2.5} .
Section 2(M)	This proposed amendment will revise the definition of the residential woodburning device.
Section 2(N)	This proposed amendment will add “ozone” to the definition of restricted-burn period.
Section 2(O)	This proposed amendment will add references to statutory authority regarding building codes.
Section 2(P)	This proposed amendment will add a definition of woodburning chiminea.
Section 3	This proposed amendment will rename Section 3 to “Burning Restrictions”.
Section 3(A)	This proposed amendment will rename Section 3(A) to “Restricted Operation During Restricted-Burn Periods” and will expand the restricted burn period to the entire calendar year. This proposed amendment will also apply the restriction to additional woodburning devices: outdoor fire pits, woodburning chimineas, and similar outdoor fires.
Section 3(B)	This proposed amendment will rename Section 3(B) to “Unlawful Operation” and will add the introductory statement “A person shall”. In Sections 3(B)(1)-(4), this proposed amendment will add outdoor fire pits, woodburning chimineas, and similar outdoor fires to the description of what is considered unlawful operation.

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Section 3(C)	This proposed amendment will rename Section 3(C) to “Lawful Operation”. This proposed amendment will also add Section 3(C)(3), which will allow a residential woodburning device, an outdoor fire pit, a woodburning chiminea, or similar outdoor fire to be operated during a declared restricted-burn period if such residential woodburning device, outdoor fire pit, woodburning chiminea, or similar outdoor fire is designed to burn exclusively natural gas or propane.
Section 3(D)	This proposed amendment will add “the ozone standard” and “outdoor fire pit, woodburning chiminea, or similar outdoor fire” to Sections 3(D)(1)-(3).
Section 3(E)	This proposed amendment will change the Arizona Revised Statute reference.
Section 3(E)(2)	This proposed amendment will impose a civil penalty of \$50 on any person who violates this ordinance for the second violation.
Section 3(E)(3)	This proposed amendment will impose a civil penalty of \$100 for the third violation and \$250 for the fourth or any subsequent violation. This proposed amendment will add outdoor fire pit, woodburning chiminea, or similar outdoor fire to the list of devices for which a citation for a violation may be refuted if a demonstration is made; a demonstration that the smoke was not caused by such device. This proposed amendment will delete “Only those violations of this ordinance which have occurred within one year of a present offense shall be considered as prior violations. No person shall be cited for a violation of this ordinance more than once in any calendar day. Each day of violation constitutes a separate offense” and will add such text to new Section 3(E)(4).
New Section 3(E)(4)	This proposed amendment will add Section 3(E)(4), which is the original text from Section 3(E)(3) - “Only those violations of this ordinance which have occurred within one year of a present offense shall be considered as prior violations. No person shall be cited for a violation of this ordinance more than once in any calendar day. Each day of violation constitutes a separate offense.”
Section 4(A)	This proposed amendment will change the ordinance reference number for the sole source of heat definition.
Section 4(D)(2)	This proposed amendment will change the ordinance reference number for the sole source of heat definition.
Section 4(D)(4)	This proposed amendment will reference the exemption for an inadequate alternate source of heat to comply with all municipal or County building code requirements.

6. Explanation of the substantial change(s) which resulted in this supplemental notice:

This supplemental filing for the P-26 Residential Woodburning Restriction Ordinance results from the inadvertent elimination of an important section of prohibitions on the specific woodburning devices: outdoor fire pits, woodburning chimineas, and similar outdoor fires.

The changes described in this notice amend the existing approved Residential Woodburning Restriction Ordinance (11/17/1999). The changes include different titles for Section 3, 3(A)(B)(C). Section 3 is now titled BURNING RESTRICTIONS and reference to residential woodburning devices is eliminated from titles in all sections (A) (B) (C). This allows the additional woodburning devices: outdoor fire pits, woodburning chimineas, and similar outdoor fires to be included in the restrictions.

This supplement is critical for the correction to include all woodburning devices in the Ordinance. A.R.S. § 49-501(F) authorizes the existing Ordinance to add restrictions to open outdoor fires in chimineas, fire pits and other similar outdoor fires. These revisions directed in SB 1552 resulted from a review of residential woodburning programs in other parts of the country. The review concluded that increasing the penalties for burning and closing the loopholes in the existing residential woodburning program would result in additional particulate matter reductions. The review also concluded that changes to other elements of the residential woodburning program other than this curtailment program and the clean burning fireplace requirements for new construction would result in only de minimis incremental emission reductions.

7. Showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. Preliminary summary of the economic, small business, and consumer impact:

Implementation of these proposed amendments to the P-26 Residential Woodburning Restriction Ordinance will not incur a cost to the individual Maricopa County resident. The potential costs of these P-26 Ordinance amendments could result from additional duties added to the Maricopa County Air Quality Department implementation and enforcement program. Conversely, there are benefits to the residential community resulting from these ordinance amendments that result in both costs savings accrued to the public from the reduction in burdens on community health care and/or from the reduction of potential physical health and welfare effects of individuals resulting from the emissions of Particulate Matter.

Costs and Benefits of P-26 Ordinance

Reviewing historical data over the last three years (2004–2006), Maricopa County Restricted-Burn Days were issued an average of 12 episodes per year. Restricting residential wood burning on these twelve no-burn days results in a reduction of annual woodburning emissions in the non-attainment area by 7.15 percent. Assuming that 80 percent of the residents comply with the no-burn requirement, annual emissions from woodburning would be reduced by at least 5.72 percent. This results in an emission reduction of 0.11 metric tons/day during the no-burn episodes each year. (Maricopa County 2005 Periodic Emissions Inventory for PM₁₀, Section 3.2.6).

These emission estimates are derived from the latest available data on residential wood use for household heating in Maricopa County, from the US Department of Energy and are for the calendar year 2003. Since all fireplaces in homes constructed since 1999 are required by Arizona statute to be clean-burning, it is assumed that new homes have negligible emissions. Thus, year 2003 data is assumed to be representative of 2005 emissions and of future emissions.

The emission reductions of PM reduce the physical health and welfare effects that accrue to the residential community. The adverse health effects result in a number of economic and social consequences, including:

1. Medical Costs: These include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare, for example.
2. Work loss: This includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.
3. Increased costs for chores and care giving: These include special care giving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual's ability to undertake some or all normal chores, and she or he may require care giving.
4. Other social and economic costs: These include restrictions on or reduced enjoyment of leisure activities, discomfort or inconvenience, pain and suffering, anxiety about the future, and concern and inconvenience to family members.

There are health benefits for the general public as a result of the enforcement of this Particulate Matter control measure. Health benefits can be expressed as avoided cases of PM related-health effects and can be assigned a dollar value. (U.S. EPA, "The Benefits and Costs of the Clean Air Act 1990 to 2010," Chapter 6, "Economic Valuation of Human Health Effects,")

As mentioned above, Maricopa County Air Quality Department has an inspection and enforcement program in place to monitor for violations of residential woodburning during restricted burn days. The inspection program includes both regular inspections and responding to smoke emission complaints. The amendments to this P-26 Residential Woodburning Ordinance will not increase the current schedule of Maricopa County inspection, monitoring, record keeping or reporting but it does close the loopholes to the restrictions in the existing residential woodburning program that would have resulted in additional particulate matter reductions. The possibility of increased fines generated from the increased penalties in this proposed ordinance are not likely to impact or create additional County revenues because, to date, there are a limited number of consecutive third or fourth violations resulting in the fines.

This ordinance applies exclusively to the residential community so there are no direct costs to the business community or impacts on small business. Implementation will not incur a cost to residents in the nonattainment area or increase current costs of the existing Maricopa County Air Quality Department regular inspection program. Implementation of these proposed Ordinance Amendments will only benefit the residential community because of

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the reduction in burdens on community health care and associated reduction in costs for health care, as mentioned above.

9. Name and address of department personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Kathleen Sommer or Jo Crumbaker
Maricopa County Air Quality Department
Address: 1001 N. Central Ave., Suite 595
Phoenix, AZ 85004
Telephone: (602) 506-6706 or (602) 506-6705
Fax: (602) 506-6179
E-mail: kathleensommer@mail.maricopa.gov or jcrumbak@mail.maricopa.gov

10. Time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments will be accepted if received between the date of this publication and March 19, 2008 5:00 p.m. Written comments may be mailed or hand delivered to the Maricopa County Air Quality Department (see item 4 above). Written comments received during the comment period will be considered formal comments to the proposed ordinance and will be responded to in the Notice of Final Rulemaking.

An oral proceeding will be held on March 18, 2008 at 3:00 p.m. at the Maricopa County offices, 1001 N. Central Ave., Phoenix, AZ 85004, Room 560. All comments made at this oral proceeding will be considered formal comments and will be recorded and transcribed. All formal comments will be addressed in the Notice of Final Rulemaking.

A sign language interpreter, alternative format materials, or assistive listening devices will be made available upon request with 72 hours notice. Additional reasonable accommodations will be made available to the extent possible within the time frame of the request. Requests should be made to (602) 372-1645.

11. Other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

Maricopa County wrote the Ordinance in accordance with EPA Standards Of Performance For Wood Heaters in 40 Code Of Federal Regulations (CFR) 60, Subpart AAA as amended through July 1, 2007 is referenced in Section 2(B)(1). These documents may be obtained and/or reviewed at:

Maricopa County Air Quality Department
1001 N. Central Ave., Suite 595
Phoenix, AZ 85004

13. The full text of the change(s) follows:

Adopted 10/05/94
Revised 04/21/99
Revised 11/17/99

MARICOPA COUNTY

P-26

RESIDENTIAL WOODBURNING RESTRICTION ORDINANCE

SECTION 1 – GENERAL

- A. **PURPOSE:** The Residential Woodburning Restriction Ordinance restricts residential woodburning in a non-approved device, outdoor fire pits, woodburning chimineas, and similar outdoor fires when monitoring or forecasting indicates that the air quality carbon monoxide (CO) standard and/or the particulate matter no burn standard standards are likely to be exceeded.
- B. **APPLICABILITY:** The Residential Woodburning Restriction Ordinance applies to any residential woodburning device, outdoor fire pits, woodburning chimineas, and similar outdoor fires in sections of Area A that are within Maricopa County or within incorporated cities and towns in such sections. The Residential Woodburning Restriction Ordinance does not apply to barbecue devices and mesquite grills.

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SECTION 2 - DEFINITIONS: For the purpose of this ordinance, the following definitions shall apply:

- A. ADEQUATE SOURCE OF HEAT** - A permanently installed furnace or heating system, connected to or disconnected from its energy source, designed to heat utilizing oil, natural gas, electricity, or propane, and designed to maintain a minimum of 70° Fahrenheit at a point three feet above the floor in all normally inhabited areas of a residence.
- B. APPROVED WOODBURNING DEVICE** - The following residential devices shall be approved woodburning devices, even though such devices may burn a solid fuel other than wood:
1. A device that has been certified by the Environmental Protection Agency (EPA) as conforming to Phase II EPA Standards Of Performance For Wood Heaters in 40 Code Of Federal Regulations (CFR) 60, Subpart AAA as amended through ~~July 1, 1998~~ July 1, 2006.
 2. Any pellet stove.
 3. Any gas burning hearth appliances, including a dedicated gas logset permanently installed in any kind of indoor or outdoor woodburning fireplace which is designed to burn exclusively natural gas or propane.
 4. Any masonry heater or any other solid fuel burning device that meets performance standards that are equivalent to the standards in 40 CFR 60, Subpart AAA as amended through ~~July 1, 1998~~ July 1, 2006, and that is approved by the Control Officer and the Administrator of EPA.
- C. AREA A** – As defined in Arizona Revised Statutes (A.R.S.) § 49-541(1), the area in Maricopa County delineated as follows:
- Township 8 North, Range 2 East and Range 3 East
Township 7 North, Range 2 West through Range 5 East
Township 6 North, Range ~~2~~ 5 West through Range 6 East
Township 5 North, Range ~~2~~ 5 West through Range 7 East
Township 4 North, Range ~~2~~ 5 West through Range 8 East
Township 3 North, Range ~~2~~ 5 West through Range 8 East
Township 2 North, Range ~~2~~ 5 West through Range 8 East
Township 1 North, Range ~~2~~ 5 West through Range 7 East
Township 1 South, Range ~~2~~ 5 West through Range 7 East
Township 2 South, Range ~~2~~ 5 West through Range 7 East
Township 3 South, Range 5 West through Range 1 East
Township 4 South, Range 5 West through Range 1 East
- D. BURN DOWN PERIOD** – That period of time, not to exceed three hours after declaring a restricted-burn period, required for the cessation of combustion within any residential woodburning device, outdoor fire pit, woodburning chiminea, or similar outdoor fire by withholding fuel or by modifying the air-to-fuel ratio.
- E. CARBON MONOXIDE (CO) STANDARD** – The maximum allowable eight-hour concentration that is nine parts of contaminant per million parts of air by volume (ppm).
- F. CHIMNEY** – A passage for smoke that is usually made of bricks, stone, or metal and often rises two feet above the roof of a building. An approved, factory-built chimney will have a label on each chimney connector and gas vent specifying that such chimney can be used for all fuels and will show the minimum safe clearances to combustibles.
- G. INAPPROPRIATE FUEL** – Includes, but is not limited to, leaves, grass clippings, green plants, refuse, paper, rubbish, books, magazines, fiberboard, packaging, rags, fabrics, animal waste, animal carcasses, coal, waste oil, liquid or gelatinous hydrocarbons, tar, ~~asphaltic~~ asphalt products, waste petroleum products, paints and solvents, chemically soaked wood, wood with a moisture content of greater than ~~30~~ 20 percent, treated wood, plastic or plastic products, rubber or rubber products, office records, sensitive or classified wastes, or any substance which normally emits dense smoke or obnoxious odors other than paper to start the fire or properly seasoned wood.
- H. NONATTAINMENT AREA** – An area so designated by the Administrator of the EPA, acting pursuant to Section 107 of the Clean Air Act, as exceeding national primary or secondary ambient air standards for a particular pollutant or pollutants.
- I. OUTDOOR FIRE PITS** – Any combustion of material outdoors, where solid fuels including wood or any other non-gaseous or non-liquid fuels are burned in the fuel bed, and the products of combustion are not directed through a flue or chimney.
- J. OZONE STANDARD** – The maximum allowable eight-hour concentration within a 24-hour period (midnight to midnight) that is 0.08 parts of contaminant per million parts of air by volume (ppm).
- ~~I.~~ K. PARTICULATE MATTER NO-BURN STANDARD** – The If either of the following maximum allowable 24-hour concentration that concentrations is forecast for particulate matter:
PM₁₀ – 120 micrograms per cubic meter;

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- PM_{2.5} – 30 micrograms per cubic meter.
- J. L. PARTICULATE MATTER STANDARD STANDARDS** – The maximum allowable 24-hour concentration that is:
- PM₁₀ – 150 micrograms per cubic meter; or
PM_{2.5} – 35 micrograms per cubic meter.
- K. M. RESIDENTIAL WOODBURNING DEVICE** – A woodburning device designed for solid fuel combustion so that usable heat is derived for the interior of a residence. ~~Residential woodburning devices do not include barbecue devices, fire pits, or mesquite grills.~~ These devices can be used for aesthetic or space-heating purposes.
- L. N. RESTRICTED-BURN PERIOD** – A condition declared by the Control Officer whenever meteorological conditions are conducive to an accumulation of CO, ozone and/or particulate matter in exceedance of the standards or when air quality reaches other limits established by the Control Officer.
- M. O. SOLE SOURCE OF HEAT** – One or more residential woodburning devices which constitute the only source of heat in a residence and/or the sole source of fuel for cooking for a residence. No residential woodburning device shall be considered the sole source of heat if the residence is equipped with a permanently installed furnace or heating system which utilizes oil, natural gas, electricity, or propane and which is designed to heat the residence whether or not such furnace or heating system is connected to or disconnected from its energy source. However, this definition shall not supersede municipal or County Building Code requirements as per authority of A.R.S. §§ 9-499.01, 9-240(B)(7), 9-276(A)(13)-(A)(15), A.R.S. § 9-801 et seq.
- P. WOODBURNING CHIMINEA** – Chimineas are burning devices made from clay, aluminum, or steel and are used for warmth and aesthetics outside in yards and patios. Chimineas are designed to burn solid fuels.

SECTION 3 – ~~RESTRICTED-BURN PERIODS~~ BURNING RESTRICTIONS:

- A. ~~RESTRICTED OPERATION OF A RESIDENTIAL WOODBURNING DEVICE DURING RESTRICTED-BURN PERIODS:~~** During a declared restricted-burn period ~~from October 1 through February 29~~, a person shall be restricted from operating a residential woodburning device, an outdoor fire pit, a woodburning chiminea, or similar outdoor fire, in sections of Area A that are within Maricopa County or within incorporated cities and towns in such sections. Exemptions to this requirement are described in Section 3(C) (~~Lawful Operation Of Specified Residential Woodburning Devices~~) and Section 4 of this ordinance.
- B. ~~UNLAWFUL OPERATION: OF A RESIDENTIAL WOODBURNING DEVICE~~** A person shall:
- ~~A person shall not~~ Not operate a residential woodburning device, an outdoor fire pit, a woodburning chiminea, or similar outdoor fire such that emissions to the atmosphere ~~from the chimney, flue, or exhaust duct~~ are visible during a restricted-burn period declared by the Control Officer.
 - ~~A person shall not~~ Not operate a residential woodburning device, an outdoor fire pit, a woodburning chiminea, or similar outdoor fire unless such ~~device~~ residential woodburning device, outdoor fire pit, woodburning chiminea, or similar outdoor fire has been installed according to the instructions and restrictions specified by the manufacturer.
 - ~~A person shall not~~ Not use a fuel in a residential woodburning device, an outdoor fire pit, a woodburning chiminea, or similar outdoor fire except those fuels that are recommended by the manufacturer.
 - ~~A person shall not~~ Not burn inappropriate fuel in a residential woodburning device, an outdoor fire pit, a woodburning chiminea, or similar outdoor fire.
- C. ~~LAWFUL OPERATION: OF SPECIFIED RESIDENTIAL WOODBURNING DEVICES:~~**
- During a declared restricted-burn period ~~from October 1 through February 29~~, a person may operate a residential woodburning device if the Control Officer has issued an exemption for such device according to Section 4 of this ordinance and if no visible emissions to the atmosphere are produced after 20 consecutive minutes immediately following an ignition of or a refueling of such residential woodburning device.
 - During a declared restricted-burn period ~~from October 1 through February 29~~, a person may operate a residential woodburning device if such device meets the requirements of Maricopa County Air Pollution Control Regulations Rule 318 (Approval Of Residential Woodburning Devices) and if no visible emissions to the atmosphere are produced after 20 consecutive minutes immediately following an ignition of or a refueling of such residential woodburning device.
 - During a declared restricted-burn period, a person may operate a residential woodburning device, outdoor fire pit, woodburning chiminea, or similar outdoor fire, if such device is designed to burn exclusively natural gas or propane.
- D. ~~DECLARATION OF A RESTRICTED-BURN PERIOD:~~**
- The Control Officer shall declare a restricted-burn period if, after reviewing available meteorological data, atmospheric conditions, and ambient temperatures, the Control Officer determines that air pollution levels

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could exceed the carbon monoxide (CO) standard, the ozone standard, and/or the particulate matter no-burn standard.

2. A person responsible for a residential woodburning device, outdoor fire pit, woodburning chiminea, or similar outdoor fire, excluding those devices described in Section 3(C) of this ordinance, already in operation at the time a restricted-burn period is declared shall withhold new fuel from the residential woodburning device, outdoor fire pit, woodburning chiminea, or similar outdoor fire for the duration of the restricted-burn period.
3. Any person operating or in control of a residential woodburning device, outdoor fire pit, woodburning chiminea, or similar outdoor fire in sections of Area A that are within Maricopa County ~~and~~ or within incorporated cities and towns in such sections has a duty to know when a restricted-burn period has been declared.
4. Notice of a restricted-burn period shall be distributed over the wire service to electronic and print media and/or announced by a recorded telephone message at least three hours before initiating any enforcement action for a violation of this ordinance.

E. VIOLATIONS, NOTICES, AND PENALTIES: For purposes of this ordinance, and in accordance with ~~ARS §11-871(C)~~ A.R.S. § 11-871(D):

1. When the Control Officer has reasonable cause to believe that any person has violated or is in violation of any provision of this ordinance, the Control Officer shall issue, for the first violation of this ordinance, a warning notice which includes a summary of the Maricopa County Residential Woodburning Restriction Ordinance and information on proper woodburning techniques.
2. The Control Officer may impose a civil penalty of \$50 to any person who violates this ordinance for the second violation of this ordinance ~~to any person who violates this ordinance~~ within a one year period after having been issued a warning notice for the first violation of this ordinance. ~~In addition, the Control Officer may impose a civil penalty of \$100 for the third and subsequent violations of this ordinance. After having been issued a citation for a violation of this ordinance, the violation may be refuted by demonstration that the smoke was not caused by a residential woodburning device or by proof of an exemption pursuant to Section 4 of this ordinance.~~
3. ~~Only those violations of this ordinance which have occurred within one year of a present offense shall be considered as prior violations. No person shall be cited for a violation of this ordinance more than once in any calendar day. Each day of violation constitutes a separate offense. For the third violation of this ordinance, the Control Officer may impose a civil penalty of \$100. The Control Officer may impose a civil penalty of \$250 for the fourth or any subsequent violation of this ordinance. After having been issued a citation for a violation of this ordinance, the violation may be refuted by demonstration that the smoke was not caused by a residential woodburning device, an outdoor fire pit, a woodburning chiminea, or similar outdoor fire or by proof of an exemption pursuant to Section 4 of this ordinance.~~
4. Only those violations of this ordinance which have occurred within one year of a present offense shall be considered as prior violations. No person shall be cited for a violation of this ordinance more than once in any calendar day. Each day of violation constitutes a separate offense.

SECTION 4 – EXEMPTIONS

- A. **RESIDENTIAL SOLE SOURCE OF HEAT EXEMPTION:** The Control Officer may grant a residential sole source of heat exemption if the Control Officer determines that a residential woodburning device meets the criteria of sole source of heat as described in ~~Section 2(M)~~ Section 2(O) of this ordinance. The recipient of a residential sole source of heat exemption must apply annually to the Control Officer for renewal of such exemption, if such exemption is still necessary. The Control Officer shall not issue a residential sole source of heat exemption after December 31, 1995. However, the Control Officer may renew a residential sole source of heat exemption if such exemption was issued before December 31, 1995 and if the residential woodburning device meets the criteria of sole source of heat as described in ~~Section 2(M)~~ Section 2(O) of this ordinance.
- B. **TEMPORARY SOLE SOURCE OF HEAT EXEMPTION:** The Control Officer may issue a temporary sole source of heat exemption for economic or health reasons if the Control Officer determines that the applicant qualifies for financial assistance, according to the economic guidelines established under the Food Stamps, Medicaid, or low income energy assistance programs, as administered by the Income Support Division, or if the Control Officer determines that failure to grant a temporary sole source of heat exemption would endanger the health of the applicant. A temporary sole source of heat exemption shall not be issued for more than 150 days.
- C. **EMERGENCY EXEMPTION:** The Control Officer may issue an emergency exemption if the Control Officer determines that an emergency situation exists. An emergency exemption shall be valid for a period determined by

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the Control Officer, but shall not exceed one year from the date it is issued. An emergency situation shall include, but is not limited to, the following:

1. A situation where a person demonstrates that his heating system, other than a residential woodburning device, is inoperable for reasons other than his own actions; or
2. A situation where a person demonstrates that his heating system has been involuntarily disconnected by a utility company or other fuel supplier.

D. INADEQUATE ALTERNATE SOURCE OF HEAT EXEMPTION: The Control Officer may issue an inadequate alternate source of heat exemption if the Control Officer determines:

1. That there is a heat source other than a residential woodburning device available to the residence;
2. That such heat source is not a sole source of heat, as defined in ~~Section 2(L)~~ Section 2(O) of this ordinance, and that such heat source is used in conjunction with a residential woodburning device;
3. That such heat source is not an approved woodburning device, as defined in Maricopa County Air Pollution Control Regulations Rule 318 (Approval Of Residential Woodburning Devices); and
4. That such heat source is not an adequate source of heat, as defined in Section 2(A) of this ordinance.

The recipient of an inadequate alternate source of heat exemption must comply with ~~all~~ municipal or County Building Code requirements (as per authority of A.R.S. §§ 9-499.01, 9-240(B)(7), 9-276(A)(13)--(A)(15), A.R.S. § 9-801 et seq.) and must apply annually to the Control Officer for renewal of such exemption, if such exemption is still necessary. The Control Officer shall not issue an inadequate alternate source of heat exemption after December 31, 1995. However, the Control Officer may renew an inadequate alternate source of heat exemption, if such exemption was issued before December 31, 1995 and if the residential woodburning device meets the criteria of this ordinance.

E. APPLICATION FOR AN EXEMPTION: Any person seeking an exemption shall do so by submitting an acceptable written application to the Control Officer. An application shall state:

1. The applicant's name and mailing address;
2. The address for which the exemption is sought; and
3. The reasons for seeking the exemption.

F. ACTION ON AN EXEMPTION APPLICATION: Following the receipt of an exemption application, the Control Officer shall either grant the exemption, grant the exemption subject to conditions, or deny the exemption. The Control Officer shall notify, in writing, the applicant of such decision.